

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

BUILDING ERECTION SERVICES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JLG INDUSTRIES, INC.)	
)	
Defendant/Third-Party Plaintiff)	Case No. 02-6087-CV-SJ-FJG
)	
vs.)	
)	
POWERSCREEN USC, INC. and)	
POWERSCREEN INTERNATIONAL,)	
)	
Third-Party Defendants.)	

ORDER

On May 24, 2005, the Court held a teleconference with the parties to discuss the pending motions and the upcoming trial. In order to clarify issues raised during the teleconference, the Court hereby rules as follows.

I. Motion to Sever the Indemnity Claim

JLG filed a Motion to Sever the trial of the indemnity claim and for determination of its attorneys' fees by the Court rather than by a jury. The Court agrees and finds that severing the indemnity portion of the trial will simplify and streamline the trial and will avoid the risk of jury confusion. Therefore, JLG's Motion to Sever is hereby **GRANTED** (Doc. # 186). The jury trial on the indemnity portion of the case will focus on how much of the \$85,000 settlement JLG can recover from Powerscreen pursuant to the Indemnity

Agreement. The issue of attorneys' fees will be determined separately by the Court after each side has made written submissions on the issue. A date for the indemnity trial will be set at a later time.

II. Trial on Misrepresentation Claims

Since the scope of the trial has changed significantly since the parties originally filed their deposition designations, objections, witness and exhibit lists, the Court would like the parties to revise their submissions. Therefore, both BES and JLG shall file revised witness lists, exhibit lists and jury instructions by Thursday June 2, 2005 at 12:00 noon. Additionally, both parties shall file revised deposition designations for only those witnesses that will not be present at trial by Thursday June 2, 2005 at 12:00 noon. Objections to any deposition designations or jury instructions filed by the other party shall be filed by Friday June 3, 2005 at 12:00 noon.

Date: May 31, 2005
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge